IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.77 OF 2006

Shri Kapila Co-operative Milk
Business Society Ltd. ...Appellant

Vs.

Sabhapati,Panchayat Samittee
Hatkangale and others ...Respondents

Mr.S.S.Patwardhan for the Appellant
Mr.Y.M.Nakhawa,A.G.P. for the Respondent Nos. 3 and 4.

CORAM: A.S.OKA, J.
DATED: MAY 5,2006.

P.C.:

1. Heard Shri Patwardhan for the Appellant. The Appellant is the original Plaintiff. The suit simplicitor for injunction was filed by the Appellant-Plaintiff against the Chairman of the Panchayat Samittee, Block Education Officer of the Panchayat Samittee, the Collector and a Police Officer. The suit was dismissed by the Trial Court and the Appeal preferred by the Appellant-Plaintiff is also dismissed.

2. Shri Patwardhan for the Appellant submitted that a suit simplicitor for injunction was filed by the Appellant and once the possession of the Appellant is accepted, injunction should have been granted against the Respondents restraining them from dispossessing the Appellant without following due process of law. He submitted that no relief was claim

against the real owner i.e. Zilla Parishad and therefore the Zilla Parishad was not at all a proper and necessary party. He placed reliance on the decision of the Apex Court reported in (2004) 1 S.C.C. page 769 (Rame Gowda (Dead) by L.Rs. Vs. M.Varadappa Naidu (Dead) by L.Rs. and another).

3. I have considered the submissions. The suit filed by the Appellant proceeds on the footing that the Appellant has become the owner of the suit premises by adverse possession. The premises in question are admittedly owned by the Zilla Parishad. An attempt was made by the Appellant to claim ownership on the basis of the adverse possession without impleading the real owner as a party-Defendant. In fact the Appellate Court has noted that the name of the owner of the suit premises is not disclosed in the plaint or in the evidence. The Appellate Court has noted that the documents on record show that the Zilla Parishad was the owner. No fault can be found with the finding of the Appellate Court that the Zilla Parishad was a necessary and proper party to the suit.

4. The relief of perpetual injunction is always discretionary. The Courts below have exercised the discretion against the Appellant on the valid grounds. No interference is called for. Second Appeal is dismissed with no order as to costs.

Judge.